

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

PAN ABODE HOMES, INC., a  
Washington corporation,

Respondent,

v.

TAHRAOUI ABDULFHAFID, a/k/a  
HAFID ABDULFHAFID, a single man,

Appellant.

No. 79670-4-I

DIVISION ONE

UNPUBLISHED OPINION

ANDRUS, A.C.J. — Tahraoui Abdulhafid appeals the denial of his motion to vacate an order extending a judgment against him and to quash a writ of execution. We affirm because the trial court did not err in denying these motions.

FACTS

In July 2006, the trial court entered a \$58,124.34 judgment in favor of Pan Abode Homes, Inc. against Abdulhafid. The court ordered the clerk to disburse Abdulhafid's \$20,000 bond held in the court registry in partial satisfaction of the judgment. After deducting a \$10 service fee from the bond, the court clerk issued Pan Abode a check for \$19,990. This disbursement, however, was neither reflected in the original judgment summary nor noted by the clerk on the execution docket.

On appeal, we affirmed the judgment and bond application. Pan Abode Homes, Inc. v. Abdulhafid, No. 58545-2-1, 2007 WL 2823284, at \*4 (Oct. 1, 2007), review denied, 164 Wn.2d 1014 (2008).

In July 2016, Pan Abode filed an ex parte petition to extend its judgment against Abdulhafid for an additional 10 years. The petition attached a copy of the 2006 judgment and indicated, erroneously, that Abdulhafid had paid nothing toward the judgment. The court granted the petition and entered an order extending the judgment (“extended judgment”). The judgment summary stated that the balance owing on the judgment was \$58,124.34.

Pan Abode obtained a writ of execution in December 2018 directing the King County Sheriff to levy and sell Abdulhafid’s interest in a pending eminent domain action. It voluntarily cancelled the sheriff’s sale because the writ did not contain the exact amount Abdulhafid owed under the judgment. Pan Abode later provided the sheriff with an itemized statement reflecting the total amount due. This itemization reflected Abdulhafid’s \$19,990 bond payment. Nevertheless, with the \$19,990 payment, the total amount owing as of January 29, 2019 was \$95,542.82, because of the 12 percent interest. Abdulhafid does not challenge this calculation. In January 2019, Pan Abode obtained a new writ of execution that correctly referenced payment of \$19,990 from the court registry.

In February 2019, Abdulhafid moved to vacate the extended judgment and to quash the writ of execution based on the error in the balance owing as reflected in the judgment summary. Following a hearing, the trial court denied Abdulhafid’s motion. Abdulhafid then filed a second motion to quash the writ of execution,

contending that he had no monetary interest in the condemnation action and the sheriff lacked authority to execute against it under RCW 6.17.160(7). The court denied this motion in March 2019.

Abdulfhafid appeals.

### ANALYSIS

Abdulfhafid raises numerous assignments of error. We address them largely in the order presented.

#### Motion to Vacate

Abdulfhafid contends the trial court erred by denying his motion to vacate the extended judgment. We review a court's denial of a motion to vacate for an abuse of discretion. Scanlon v. Witrak, 110 Wn. App. 682, 686, 42 P.3d 447 (2002). "Discretion is abused when exercised on untenable grounds or for untenable reasons." Id.

CR 60(b) empowers a court to relieve a party from a final judgment, order, or proceeding under specified grounds, including the following pertinent ones Abdulfhafid raised in his motion to vacate below:

- (4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;
- (5) The judgment is void;
- ...
- (11) Any other reason justifying relief from the operation of the judgment.

CR 60(b)(4), (5), (11).

#### CR 60(b)(4) - Fraud or Misrepresentation

Abdulfhafid argues that Pan Abode deceived the court in its motion to extend the judgment by falsely representing that Abdulfhafid had made no

payment on the judgment. He claims that, in order to be entitled to an extension of a judgment, RCW 6.17.020(3)<sup>1</sup> required Pan Abode to provide the court with an updated judgment summary that confirmed the amount Abdulhafid owed on the judgment. Because Pan Abode's updated judgment summary did not deduct the \$19,990 it received from the bond, Abdulhafid contends Pan Abode obtained the extension through fraud.

To prevail on a CR 60(b)(4) motion, the moving party must establish by clear and convincing evidence that an adverse party obtained the judgment through fraud. Peoples State Bank v. Hickey, 55 Wn. App. 367, 371-72, 777 P.2d 1056 (1989). The fraudulent conduct must cause the entry of the judgment "such that the losing party was prevented from fully and fairly presenting its case or defense." Lindgren v. Lindgren, 58 Wn. App. 588, 596, 794 P.2d 526 (1990).

The record does not contain evidence supporting Abdulhafid's claim of fraud. First, although Pan Abode's 2016 petition provided the court with an inaccurate updated judgment summary, Pan Abode submitted a declaration from the attorney who filed the petition stating that, as of June 2016, he was unaware that a disbursement from the court registry had been made in partial satisfaction of the judgment and, had he known, he would have informed the court and arranged for the filing of a partial satisfaction of judgment. The existence of a clerical error is not evidence of fraud. CR 60(b)(4) is aimed at judgments "which were unfairly obtained, not at those which are factually incorrect." Hickey, 55 Wn. App. at 372.

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<sup>1</sup> Under RCW 6.17.020(3), the order granting the petition "shall contain an updated judgment summary as provided in RCW 4.64.030."

Second, Pan Abode's petition also provided the court with a copy of the 2006 order directing the court clerk to apply Abdulhafid's \$20,000 bond to the judgment. This fact supports the trial court's conclusion that Pan Abode had not attempted to hide any information from the court when it sought to extend the judgment.

Lastly, as the trial court indicated at the hearing, there are multiple entries in the court record "show[ing] that the \$20,000 was deposited and forfeited so there is no duplicity." Abdulhafid does not challenge the trial court's finding that there was no deception on Pan Abode's part.

Because there is no evidence Pan Abode fraudulently withheld payment information from the court when it sought to extend its judgment, the court properly denied Abdulhafid's CR 60(b)(4) motion.

#### CR 60(b)(5) - Void Judgment

Abdulhafid contends that the order extending the judgment was void because the judgment summary was inaccurate. "Whether a judgment is void is a question of law that we review de novo." Ha v. Signal Elec., Inc., 182 Wn. App. 436, 447, 332 P.3d 991 (2014). A void judgment is a judgment entered by a court that lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order involved. Bresolin v. Morris, 86 Wn.2d 241, 245, 543 P.2d 325 (1975).

Abdulhafid argues the trial court lacked the inherent power to enter the order extending Pan Abode's judgment because Pan Abode failed to provide the court with an updated judgment summary. But Abdulhafid relies on a misreading

of the statute giving superior courts the authority to extend judgments. RCW 6.17.020(3) does not mandate that the petitioner provide an updated judgment summary to the court. It provides merely that “[t]he order granting the application shall contain an updated judgment summary as provided in RCW 4.64.030.” Although King County Superior Court Local Civil Rule 7(b)(5)(C) requires a moving party to submit a proposed order with any motion, the court’s authority to sign an order extending a judgment is statutory and does not arise from this local rule.

And Pan Abode did provide the court with an updated judgment summary—just one containing an error. We have found no authority for the contention that a trial court lacks the inherent authority to sign a judgment when the judgment happens to contain a clerical error. Indeed, CR 60(a) provides that clerical errors in judgments may be corrected by a court at any time on its own initiative or on the motion by any party. Even judgments containing clerical errors in mathematical computations may be corrected by the court under CR 60(a). See KARL B. TEGLAND, 4 WASHINGTON PRACTICE: RULES OF PRACTICE CR 60, author’s comment 3 (6th ed. March 2020 Update). The error in Pan Abode’s proposed judgment summary did not deny the court the authority to consider and rule on the motion to extend the judgment.

We are unaware of any case holding that a clerical error in an updated judgment summary renders an extended judgment void. Abdulhafid acknowledges that “there is no case law on point addressing this exact issue.” Where, as here, the original judgment was valid and Pan Abode filed its petition to extend the judgment in a timely manner, there is no basis for concluding the clerical

error in the updated judgment summary rendered the extended judgment void. The trial court did not err in denying the motion to vacate based on CR 60(b)(5) grounds.

CR 60(b)(11) - Any Other Reason Justifying Relief from Judgment

Abdulhafid contends the trial court should have vacated the order under CR 60(b)(11) because he did not receive notice before the court entered the extended judgment and was thus denied the opportunity to oppose Pan Abode's petition or appeal the extended judgment.

Abdulhafid concedes that RCW 6.17.020 was amended by the legislature to permit a judgment creditor to petition the court ex parte for an extension of the judgment without notice to the judgment debtor. He admits he "was not entitled to notice under RCW 6.17.020(3)."

But because of the ex parte nature of the proceeding, Abdulhafid contends CR 60(b)(11) is the only mechanism by which he could raise procedural irregularities that would otherwise be available under CR 60(b)(1). Relief under CR 60(b)(11) is limited to "extraordinary circumstances not covered by any other section of the rule." In re Marriage of Yearout, 41 Wn. App. 897, 902, 707 P.2d 1367 (1985) (quoting State v. Keller, 32 Wn. App. 135, 140, 647 P.2d 35 (1982)).

Even though Abdulhafid did not know Pan Abode was seeking an extension of the judgment, he had multiple paths for challenging the amount of the extended judgment after-the-fact. As noted above, CR 60(a) would have permitted Abdulhafid to move to amend the judgment to correct any clerical mistake in the amount he owes. The one-year time bar of CR 60(b)(1) does not apply to

CR 60(a). Because CR 60(a) covers the situation Abdulhafid faced here, namely the existence of a clerical error in the judgment summary, CR 60(b)(11) does not apply.

Additionally, RCW 4.56.100(1) requires the clerk of court to note on the execution docket any partial or full satisfaction of judgment. Courts have inherent power to determine whether a judgment has been satisfied. 47 AM. JUR. 2D Judgments § 765 (May 2020 Update). If Pan Abode refused to file a partial satisfaction of judgment to reflect payment it received from the bond proceeds, the court could have ordered it to do so.

The trial court did not err in denying the motion to vacate the order extending Pan Abode's judgment.

#### Order Nunc Pro Tunc

Abdulhafid next argues that the trial court abused its discretion by *sua sponte* amending the extended judgment nunc pro tunc.<sup>2</sup> He claims because Pan Abode made the error in preparing the extended judgment, rather than the judicial officer who signed it, amending it in 2019 and making it retroactive to 2016 was inappropriate.

There are two problems with this argument. First, the trial court did not amend the extended judgment and did not sign any order making an amendment retroactive to 2016. During the hearing on Abdulhafid's motion to vacate the extended judgment and to quash Pan Abode's writ of execution, the trial court

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<sup>2</sup> "A nunc pro tunc order allows a court to date a record reflecting its action back to the time the action in fact occurred." State v. Hendrickson, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). Such an order is "generally appropriate to correct only ministerial or clerical errors, not judicial errors." Id. at 479.

suggested that entering an order nunc pro tunc could eliminate any problems with the writ of execution. Counsel for Pan Abode asked “are you suggesting [] an order nunc pro tunc amending the extended judgment? Because I certainly can cooperate with [Pan Abode’s counsel] to do that.” The court stated that the parties could discuss that issue but indicated it would not take such a step “at this time.” Abdulhafid concedes in his brief that “the trial court didn’t enter a written nunc pro tunc order extending judgment.” Under these circumstances, there is no order nunc pro tunc to review.

Second, even had the court amended the judgment and made the amendment retroactive to 2016, there would have been no abuse of discretion. A trial court misuses its nunc pro tunc power and abuses its discretion when it uses such an order to change its mind or to rectify a mistake of law. Hendrickson, 165 Wn.2d at 479. “But where the record demonstrates that the court intended to take, and believed it was taking, a particular action only to have that action thwarted by inartful drafting, a nunc pro tunc order stands as a means of translating the court’s intention into an order.” Id.

In this case, the court signed an order extending a valid judgment for ten years, intending for that judgment to reflect the actual amount Abdulhafid owed to Pan Abode. Because of inartful drafting by Pan Abode, it entered an extended judgment that failed to reflect a partial payment on that judgment. No one disputes that had Pan Abode’s counsel known of the payment, he would have reflected it in the amount of the proposed extended judgment. When this clerical error was

discovered in 2019, there would have been nothing preventing the trial court from correcting the judgment at that time and making the correction retroactive to 2016.

Motion to Quash Writ of Execution

Abdulhafid next argues that the trial court erred by denying the motion to quash the writ of execution because the clerk issued the writ in reliance on a factually erroneous order. He also maintains that the court erred in denying his second motion to quash because his interest in a then-pending condemnation action was not subject to execution under RCW 6.17.090, .160(7). This court will review a trial court's denial of a motion to quash for an abuse of discretion. See Paglia v. Breskovich, 11 Wn. App. 142, 144-45, 147, 522 P.2d 511 (1974) (court has inherent supervisory power over its own processes to enjoin sheriff's sale on writ of execution).

RCW 6.17.110(1) provides that a writ of execution "shall intelligibly refer to the judgment, stating the court, the county where the judgment was rendered, the names of the parties, the amount of the judgment if it be for money, and the amount actually due thereon." Here, because the initial writ of execution did not identify correctly the amount "actually due," Pan Abode voluntarily cancelled the scheduled sheriff's sale and obtained a new writ which correctly identified the amount Abdulhafid owed. The second writ of execution explicitly referenced the payment from the court registry:

WHEREAS, Pan Abode Homes, Inc. . . . recovered judgment against . . . Hafid Abdulhafid [sic] . . . in the Superior Court of King County, State of Washington, on the 14th day of July, 2006, for the sum of \$25,600.00, cost of suit, taxed at \$2,299.34 and an attorney's fee of \$30,225.00, interest on judgment, attorney's fees and costs at the rate of 12% per annum from July 14th, 2006. A payment of \$19,990

was made from the Court Registry, making the total amount owing \$38,134.34 plus interest at the rate of 12% per annum from July 14th, 2006.

The second writ—and the only one actually used by the sheriff to execute against Abdulhafid’s property—correctly stated the amount actually owed. The trial court did not abuse its discretion in denying the motion to quash the writ based on any error in the extended judgment.

Abdulhafid contends, alternatively, that his interest in the condemnation lawsuit is not subject to execution under RCW 6.17.090 or RCW 6.17.160(7). We disagree. RCW 6.17.090 provides that “[a]ll property, real and personal, of the judgment debtor that is not exempted by law is liable to execution.” RCW 6.17.160(7) provides that “intangible personal property may be levied on.” Abdulhafid relies on a provision of this statute that provides: “If the property is a claim on which suit has been commenced, a copy of the writ and of the description shall also be filed with the clerk of the court in which the suit is pending.” He argues that his interest in the condemnation lawsuit is not personal property or a “claim on which suit has been commenced.” He also maintains that his interest in the condemnation lawsuit is limited to “defending against the taking of his leasehold by the County.” He contends that because he did not initiate the lawsuit and has not asserted a claim against anyone, whatever interest he has cannot be subjected to a writ of execution.

Once again, Abdulhafid misreads the statute and misunderstands Washington creditor/debtor law. RCW 6.17.160(7) does not create an exemption from execution for condemnation actions or lawsuits in which the debtor is a named

defendant. It merely provides direction as to when a writ of execution must be filed with a court.

It is well-established that a judgment debtor's interest in pending litigation is subject to execution. See Robb v. Kaufman, 81 Wn. App. 182, 189, 913 P.2d 828 (1996). Although the record is sparse, it appears Abdulhafid owns a sole proprietorship named Amana Global Company and in July 2018, King County brought a condemnation action against Amana to acquire its leasehold interest in a parcel of land. The court entered findings of fact and conclusions of law, determining that the land under leasehold was needed to construct and operate a flood control project. The court subsequently denied Amana's motion for reconsideration, because "the condemnation of the real property interest is for flood protection (capital project). The project secondarily provides for salmon habitat restoration."

In a condemnation action, a government entity must submit a petition in superior court seeking a determination that the taking of private property is needed for a public use, a jury determination of the amount of compensation to be paid to the owner of the property at issue, and transfer of title. RCW 8.08.010; Pub. Util. Dist. No. 2 of Grant County v. N. Am. Foreign Trade Zone Indus., LLC, 159 Wn.2d 555, 565, 151 P.3d 176 (2007). As a matter of law, Amana—and its sole proprietor, Abdulhafid—had a statutory right to compensation for the taking of Amana's leasehold interest by the county for flood control and salmon habitat restoration. Although Abdulhafid argues that his interest in the outcome of the litigation had

no value, the sheriff's return of service indicates his interest in the claim was sold to Pan Abode for \$95,000.

The trial court did not err in concluding that Abdulhafid's interest in the condemnation lawsuit was subject to execution by sheriff's levy.

Accrual of Post-Judgment Interest on Judgment

Abdulhafid next maintains that Pan Abode waived its right to collect interest from 2006 to 2016. His argument is based on Pan Abode's 2016 petition to extend the judgment and its proposed judgment summary both of which stated: "5. Interest Owed to Date of Judgment: \$N/A." Abdulhafid contends this statement constituted a waiver of any accrued post-judgment interest. Pan Abode argues the reference to interest in paragraph 5 of its petition and the order extending the judgment was to pre-judgment, not post-judgment, interest. Pan Abode has the better argument.

The original judgment provided that "the total judgment amount shall bear interest from and after the date of entry of this judgment at the rate of 12% per annum, until fully paid." Pan Abode's petition to extend the judgment referred to "interest owed to date of judgment." The "date of judgment" was July 16, 2006. An extended judgment is not a new judgment. It merely increases the length of time during which Pan Abode may execute on a pre-existing judgment. In addition, the petition indicated that the "Judgment Balance, Fees and Costs shall bear interest at 12% per annum." The only logical interpretation of the phrase "interest owed to date of judgment" in the petition and in the updated judgment summary is

that no pre-judgment was awarded but post-judgment interest has continued to accrue at the expressly stated rate of 12 percent per annum.

We therefore reject Abdulhafid's contention that Pan Abode waived its right to post-judgment interest from the date of the 2006 judgment to the date the court extended that judgment in 2016.

Abdulhafid's Request for CR 11 Sanctions

Abdulhafid contends the trial court erred in rejecting his request for CR 11 sanctions against Pan Abode's attorneys. Below, Abdulhafid requested the imposition of sanctions based on counsel's "deception before the ex parte court."

CR 11 sanctions are appropriate if the following three conditions are met: "(1) The action was not well grounded in fact; (2) it was not warranted by existing law; and (3) the attorney signing the pleading has failed to conduct a reasonable inquiry into the factual or legal basis of the action." Manteufel v. Safeco Ins. Co. of America, 117 Wn. App. 168, 176, 68 P.3d 1093 (2003). We review a court's decision on CR 11 sanctions for abuse of discretion. Marina Condo. Homeowner's Ass'n v. Stratford at Marina, LLC, 161 Wn. App. 249, 263, 254 P.3d 827 (2011).

Abdulhafid contends Pan Abode's attorneys violated CR 11 in four ways: (1) deceiving the ex parte court regarding the amount he owed under the judgment; (2) "recklessly" obtaining a writ of execution based on an erroneous judgment; (3) pursuing a sheriff's sale even after discovering the error in the extended judgment; and (4) obtaining a new writ of execution after Abdulhafid filed a motion to quash the writ of execution.

Abdulfhafid did not demonstrate that Pan Abode's counsel acted deceptively or recklessly when they filed a petition to extend the judgment. The trial court found Pan Abode had not acted with duplicity and we cannot find on this record that they were reckless in not reflecting the bond payment in the petition to extend the judgment. Pan Abode explained how the error occurred to the trial court, it found no basis for Abdulfhafid's claim of deception, and it found Pan Abode to be the prevailing party. Under these circumstances, the trial court did not abuse its discretion in denying Abdulfhafid's request for CR 11 sanctions.

Attorney Fee Award to Pan Abode

Abdulfhafid challenges the trial court's award of attorney fees to Pan Abode under the parties' license agreement. "We review the legal basis for an award of attorney fees de novo and the reasonableness of the amount of an award for abuse of discretion." Hulbert v. Port of Everett, 159 Wn. App. 389, 407, 245 P.3d 779 (2011).

Here, the license agreement provides in pertinent part: "The substantially prevailing party in any litigation arising hereunder shall be entitled to its reasonable attorneys' fees and court costs, if any." In Abdulfhafid's motion to vacate the extended judgment, he sought attorney fees and costs based on this same provision of the license agreement. Because this litigation arises under the license agreement, and Pan Abode prevailed, we affirm the trial court's decision to award attorney fees.

Because Abdulfhafid does not prevail here, we deny his request for attorney fees on appeal. But under the terms of the licensing agreement, Pan Abode, as

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the prevailing party, is entitled to an award of attorney fees on appeal. RAP 18.1(a). Therefore, we grant Pan Abode's request for attorney fees subject to compliance with RAP 18.1(d).

Affirmed.

Andrew, A.C.J.

WE CONCUR:

Chun, J.

Burns, J.